IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8281 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ALLARAKHA MALEK COUSIN BROTHEROF DETENU SABBIR @ SHABBO

Versus

STATE OF GUJARAT

Appearance:

MR RS SANJANWALA for Petitioner

MR KT DAVE, AGP, for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 14/03/2000

ORAL JUDGEMENT

1. The District Magistrate, Bharuch, passed an order in exercise of powers under Section 3(1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA Act" for short), on August 8, 1999, against the detenu-Sabbir @ Shabbo Mahemud Malek, detaining him under

the provisions of the said Act.

2. The detaining authority considered four offences registered against the detenu under Bombay Prohibition Act. Besides these offences, the authority also considered statements of two anonymous witnesses recorded on 8th and 9th May, 1999 and came to conclusion that the petitioner is a bootlegger, engaged in activities which are detrimental to public order. Witnesses are not prepared to come forward and depose against him and the authority, therefore, after recording satisfaction about the correctness and genuineness of the fear expressed by the witnesses, exercised powers under Section 9(2) of the PASA Act and maintained anonymity of these witnesses. After considering possibility of resorting to less drastic remedies, the detaining authority passed the order.

3. The petitioner, who is cousin of the detenu, has assailed this order of detention by this petition under Article 226 of the Constitution on various grounds. However, learned advocate, Mr. Sanjanwala, appearing for the petitioner has restricted his argument to the ground of delay in passing the order. He submitted that last registered offence against the detenu is of 14th March, 1999. The statements of witnesses have been recorded on 8th and 9th May, 1999 by the proposing authority. The statements of these witnesses have been verified by the Dy.S.P. on 13th May, 1999, whereas the order in question is passed on 8th August, 1999, i.e. nearly after three months. Mr. Sanjanwala, therefore, submitted that the satisfaction recorded by the detaining authority for resorting to detention under PASA for immediately preventing the detenu from continuing his activities cannot be considered as genuine, as the grounds for which the order is passed have become stale. He, therefore, submitted that the petition may be allowed.

4. Mr. K.T. Dave, learned Assistant Government Pleader, has opposed this petition. He submitted that the detaining authority has verified these statements on 2nd August, 1999 and the order is passed on 8th August, 1999 and, therefore, there is no delay.

5. Considering the rival side contentions, what transpires is, factually it is correct, that the last offence registered against the detenu is 14th March, 1999. The statements were recorded on 8th and 9th May, 1999, which were verified by Dy.S.P., Bharuch on 13th May, 1999. However, the detaining authority has verified the same on 2nd August, 1999. What transpired between

13th May, 1999 and 2nd August, 1999 is not disclosed by filing any affidavit and it does not seem to be the case of the detaining authority, as can be seen from the grounds of detention, that there was any involvement of the detenu in any criminal proceedings subsequent to the date of verification by the Dy.S.P. and before the passing of the order. This indicates two possibilities. The first being that the papers were not forwarded expeditiously to the detaining authority by the sponsoring authority, in which event, there is gross delay in sponsoring the detention by the sponsoring authority, which aspect ought to have been considered by the detaining authority while considering the need for detaining the detenu for immediately preventing the detenu. The second possibility is that the sponsoring authority forwarded the papers to the detaining authority and the papers remained with the detaining authority for a long time and, in that event also, urgency noticed by the detaining authority for resorting to detention under PASA Act cannot be said to be genuine. In either case, the delay affects the merits of the detention. The detention is rendered bad in law and deserves to be quashed. It may be noted that, none of the respondents have filed any affidavit in reply to explain this delay of about three months and in absence of any explanation coming from the authorities concerned, this delay has rendered a fatal blow on the detention. The petition deserves to be allowed on this count alone.

6. In view of the above discussion, the petition is allowed. The impugned order of detention dated August 8, 1999 is hereby quashed. The detenu-Sabbir @ Shabbo Mahemud Malek is ordered to be set at liberty forthwith, if not required in any other matter. Rule is made absolute with no orders as to costs.

[A.L. DAVE, J.]

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